IN THE GRAND COURT OF THE CAYMAN ISLANDS
FINANCIAL SERVICES DIVISION

FSD CAUSE NO: 9/2009 (AJEF)

31-8-10

IN THE MATTER OF THE COMPANIES LAW (2009 REVISION)

AND IN THE MATTER OF LAURUS MASTER FUND LTD. (IN OFFICIAL LIQUIDATION)

Coram: The Hon. Mr. Justice Angus Foster

Appearances: Applicants (Joint Official Liquidators) – Mr. Matthew Crawford and Mr. Marc Kish of Maples and Calder

Joint Official Liquidators of Laurus Offshore Fund Ltd. (In Official Liquidation) – Mr. Sam Dawson of Solomon Harris

Heard: Wednesday 18th August 2010

RULING

1. This Ruling concerns two interrelated issues namely: (1) whether the shareholders of a company in official liquidation can, with the consent of the official liquidator(s), amend the company's articles of association to allow for the issue of further shares in the company and (2) whether the official liquidator(s) of the company can then take the necessary steps to allot and issue such further shares. There is apparently no Cayman Islands or English authority on these questions.

Background

2. The Applicants are the Joint Official Liquidators ("the JOLs") of Laurus Master Fund Ltd. (In Official Liquidation) ("the Master Fund"). The Master Fund was

incorporated in the Cayman Islands as an exempted company on 11th December 2000 and carries on business as a mutual fund. The JOLs were first appointed as Joint Voluntary Liquidators of the Master Fund in September 2008 but on 18th December 2008 it was ordered that the liquidation be continued subject to the supervision of the Court.

3. The Master Fund has two shareholders: Laurus Offshore Fund Ltd. (In Official Liquidation) ("the Offshore Fund"), which is a Cayman Islands exempted company, and Laurus US Fund LP ("the Onshore Fund") which is a Delaware limited partnership. I shall refer to the Offshore Fund and the Onshore Fund together as the "Feeder Funds". The Offshore Fund, which has by far the largest investment in the Master Fund, was also originally put into voluntary liquidation but that too came under the supervision of the Court pursuant to an order made on 19th November 2009. The JOLs are not the liquidators of the Offshore Fund, which has different liquidators. The Onshore Fund continues to be managed by its general partner, Laurus Financial LLC, a Delaware limited liability company.

4. The Master Fund is the master fund in a typical master-feeder investment fund structure. The investment manager is Laurus Capital Management LLC ("the Investment Manager"), which is based in New York. The underlying assets of the Master Fund comprise a portfolio of approximately 100 debt and private equity investments covering a range of industries, the investments in which are mostly illiquid. As at 31st August 2009 the Net Asset Value of the Master Fund was calculated by it administrator to be US$670,403,831.

5. The Master Fund has only one known potential third-party creditor, an entity in the Dominican Republic. The alleged debt relates to land in that country which is the subject of complicated litigation there. The JOLs are considering the possible compromise of the alleged debt but in the meantime full provision for the potential debt, which may amount to US$15.5m, has been made by the JOLs and is being held by them in cash.

6. In accordance with the supervision order made on 18th December 2008, the Liquidation Committee ("the Committee") of the Master Fund comprises 6 representatives, namely the Offshore Fund (acting through its joint official liquidators), the Onshore Fund (acting through its general partner), the Investment Manager and 3 other entities which are investors in the Offshore Fund.

7. With the approval of the Committee the JOLs have continued to utilize the services of the Investment Manager to assist with the realization of the Master Fund's assets. Prior to the supervision orders in respect of both the Master Fund and the Offshore Fund the Investment Manager was remunerated on the basis of an amended Investment Management Agreement under which significant remuneration payable by the Offshore Fund has been deferred. Pursuant to an order of the Court in the liquidation proceedings relating to the Offshore Fund, the Investment Manager is now to be paid in respect of such historic deferred compensation as a percentage of realizations to be distributed by the Offshore Fund to its investors so that distributions to investors will now be net of all Master Fund and Offshore Fund liquidation costs. As far as ongoing management fees are concerned, pursuant to a

recently executed further amendment to the Investment Management Agreement, the Investment Manager is to be paid in respect of such fees on the basis of a decreasing scale of fixed fees ending in March 2012 and also by way of incentive fees if distributions by the Master Fund to the Feeder Funds' investors are greater than certain agreed thresholds. The Investment Manager has requested and the Committee, and the JOLs, subject to the approval of the Court, have agreed that these incentive fees should be effectively substituted and represented by the issue of a new class of shares in the Master Fund to the Investment Manager. The evidence is that as a result of a relatively recent change in the United States Federal Income Tax treatment of such incentive fees, US based fund managers are usually now seeking to have incentive fees paid by way of an allocation of profits equating to equity distributions from such a master fund, which results in more favourable tax treatment of the fund managers. More recent fund structures are apparently set up that way.

8. Since the articles of association of the Master Fund do not currently permit a new share class to be issued, the Feeder Funds, as shareholders of the Master Fund, would require to pass a special resolution to effect the necessary amendment of the articles to enable the company to issue such shares. However, the question arises as to whether the shareholders may do that, given the official liquidation of the Master Fund, even with the consent of the JOLs.

9. As at 30th June 2010 receipts in the Master Fund liquidation totaled US$73.1m. Due to the illiquid nature of most of the Master Fund's investments the JOLs latest

realization plan does not predict, in most cases, by what date individual investments will be realized, save that it anticipates realization of the entire portfolio by 31st March 2012. The JOLs believe that the Investment Manager is very important to the successful implementation of the realization plan and particularly in relation to one of the start-up industries which represents a major investment of the Master Fund. The principal of the Investment Manager has a long term involvement with that particular business, is very knowledgeable about it and has a close working relationship with its senior management. He has also been involved in seeking to obtain financing of that business through a possible IPO. The JOLs consider that if the Investment Manager were to be replaced, with the consequence that its principal would no longer be directly involved, there is a real risk that this business, which is a potentially very profitable investment of the Master Fund, is considerably less likely to succeed.

10. The Committee has also informed the JOLs that it wishes to maintain the status quo with respect to the involvement of the Investment Manager, being of the view that retention of the Investment Manager will be the most likely way for the Master Fund to make a significant return on that investment. They also consider that the Investment Manager is best placed to realize the other investments in the Master Fund's portfolio most profitably. The JOLs also accept that.

11. Accordingly the applications which the JOLs now make have the full support of the Committee, including the Offshore Fund as the major stakeholder in the Master Fund. The JOLs therefore consider it desirable for the Investment Manager to

continue providing investment management services to the Master Fund and they have accordingly re-negotiated the Investment Manager's remuneration on a basis which the JOLs consider to be more favourable to the Master Fund than the previous remuneration basis as well as being sufficiently attractive, particularly for US tax reasons, to the Investment Manager. The re-amended Investment Management Agreement, which is expressed to be subject to the approval of the Court as far as the proposed issue of the special shares to the Investment Manager is concerned, has now been signed. It makes alternative provision for the manner of payment of incentive fees to the Investment Manager if the Court should determine that the proposed special shares may not be issued, although that is a considerably less attractive option to the parties.

12. As well as taking various steps to restrict the ongoing costs of the Investment Manager's continuing role, the JOLs have also taken steps to enable them to monitor the Investment Manager's management and realization of the Master Fund's portfolio. These steps have enabled and will continue to enable the JOLs to maintain the necessary knowledge of the assets under management and the status of the realization plan with respect to individual assets in the interests of the stakeholders in the Master Fund winding-up.

13. In the circumstances the JOLs consider that providing the Investment Manager with incentive based remuneration by way of the issue to the Investment Manager of the proposed special class of shares in the Master Fund is both appropriate and desirable, not only for the Investment Manager in relation to management of its own tax affairs

but also for the Master Fund, as clearly recognized, indeed supported, by the Committee. In taking such shares, which would be non-voting, by way of incentive payment the Investment Manager would of course be subordinating itself in respect of such remuneration to creditors of the Master Fund (although the only known creditor of the Master Fund is anyway fully provided for as explained in paragraph 5 above) as well as being directly incentivized to maximize realization returns through its participation as a shareholder.

14. At a meeting on 16th June 2010 the Committee confirmed its approval of this new remuneration package for the Investment Manager as set out in the re-amended Investment Management Agreement; including the proposed issue of the special shares.

The Shareholders' powers - Discussion

15. As I have already mentioned, the Master Fund's articles of association do not currently permit the proposed new class of shares to be issued. If the Master Fund was not in liquidation, the Feeder Funds, as its shareholders, would require to pass a special resolution to amend the company's articles of association to enable such shares to be issued by this company and allocated by its directors. As I have already explained, the Feeder Funds as the Master Fund's shareholders, are willing, indeed wish, to do this and a draft special resolution for this purpose was included in the documents submitted to me at the hearing. For the reasons explained above the JOL also support this and consider it to be in the interests of the winding-up.

16. The statutory scheme which becomes applicable to a company that is ordered to be wound up was summarized, by reference to the equivalent English legislation, by Lord Diplock in the House of Lords in ***Ayerst (Inspector of Taxes) v C & K (Construction) Ltd.*** [1976] AC 167 at 176-177. He made it clear that on the winding-up of a company the members of the company are generally deprived of their ability to control in any way the management of the company. Such power in respect of management is, in this jurisdiction pursuant to Part IV of the Companies Law (2010 Revision) ("the Law"), as in the United Kingdom, transferred from the shareholders and directors of the company to a liquidator *"charged with the statutory duty of dealing with the company's assets in accordance with the statutory scheme"*. This is a well established and generally accepted principle.

17. It was pointed out by counsel for the JOLs that there are no provisions in the Law which expressly prohibit a special resolution being passed by the shareholders of a company in official liquidation with the consent of the official liquidator(s), although it seems to me that that is not surprising in light of the principle which I have just outlined. There is provision in the Law for a special resolution by the shareholders of a company in voluntary liquidation in the context of the Court's power to make an order recalling such a liquidation. Section 111 (2) requires an application by a voluntary liquidator to recall the liquidation to be accompanied by a special resolution of the shareholders stating that the company will not be wound up. Clearly therefore the section contemplates the shareholders of a company in voluntary liquidation passing a special resolution to that effect. However, this does not, in my view, assist in determining whether the shareholders of a company in

compulsory liquidation may do likewise. Section 111 (2) of the Law relates to a particular situation, namely where the shareholders of a company in voluntary liquidation wish to recall the liquidation and to place the company concerned back into active status and good standing. Clearly the wishes of the shareholders in that regard are an essential pre-requisite to any such action and are most appropriately expressed by a special resolution.

18. In the Australian case ***Re HDT Special Vehicles (Aust) Pty Ltd. (In Liquidation)*** (1991) 6 ALR 5, the company concerned purported to change its name between the date of the application to wind up the company and the date of the winding-up order. Senior Master Mahony in the Supreme Court of Victoria held that, as is the case in this jurisdiction, when a winding-up order is made by the Court the winding-up is deemed to have commenced at the date of filing the application (in this country a petition) for winding-up. He concluded that the registration of the change of the name of the company was invalid because the purported special resolution of its shareholders changing the company's name was null. He went on to say (page 8):

> *"The members of a company which is being wound up by order of the court cannot hold meetings and pass resolutions of the type which may be held and passed by members of companies which are not being so wound up.....it is sufficient for my present purposes to observe that unless and until such a winding-up is terminated any resolution of the members of a company being wound up by the court, if valid, must be a resolution with respect to the purposes of the winding-up. The members have no power to pass, independently of the liquidator, a special resolution changing the name of the company. They may, of course, purport to pass such a resolution, but, if so, it will be null....."* [My emphasis added].

Accordingly the shareholders' ability to pass a special resolution if valid (although not in that case) was recognized as long as it is with respect to the purposes of the winding-up and with the consent of the official liquidator. In the context it seems to me that the words "if valid" must have been intended to mean procedurally valid, in other words that the resolution was otherwise passed in accordance with the company's articles of association.

19. In ***Re Sound Consolidated Industries Pty Ltd. (In Liquidation)*** (1992) 6 AC SR 647 the same Senior Master in the same Court in similar circumstances again held that a purported resolution by the shareholders of the company to change the name of the company after the application for winding-up was pending before the court was of no effect. In doing so he re-iterated his views in the passage to which I have referred above from ***Re HDT Special Vehicles (Aust) Pty Ltd. (In Liquidation)*** (ibid).

20. It was submitted on behalf of the JOLs that the proposition put forward by the Senior Master in these two Australian cases is correct in principle and should be recognized as such and adopted in the present case. On that basis, it was argued that, with the consent of the JOLs, the Feeder Funds should be able to pass a special resolution in accordance with the terms of the articles of the Master Fund to amend the articles to enable the special shares in the Company to be issued to the Investment Manager as proposed. It was contended that such a resolution would, in the circumstances, clearly be with respect to the purposes of the winding-up since the whole rationale for issuing such shares is to retain the Investment Manager's services in the interests of the likelihood of a more profitable realization of the Company's investments for

the benefit of the Company's business and in the interests of all stakeholders in the Company's winding-up.

21. The supervision order dated 18th December 2008 expressly provided *inter alia* that in addition to all their other powers the JOLs (referred to in the order as JVLs) shall have all the powers set out in Section 109 of the Companies Law (2007 Revision), (pursuant to which Revision the supervision order was made) as though they were official liquidators of the Master Fund. One of the powers of an official liquidator pursuant to Section 109 of the 2007 Revision is *"to carry on the business of the company, so far as may be necessary for the beneficial winding-up thereof"* (see Subsection (b)). A further power is *"to do and execute all such things as may be necessary for winding-up the affairs of the company and distributing its assets"* (see Subsection (h)). It was submitted on behalf of the JOLs that, having regard to the nature of the business of the Master Fund, the carrying on of that business for the time being in implementation of the asset realization plan is necessary and appropriate for the beneficial winding-up of the Company and that the retention of the services of the Investment Manager on the re-negotiated and agreed terms is an integral part of that and necessary for the successful winding-up of the affairs of the Company and the distribution of its assets.

The directors' powers - Discussion

22. As far as the directors of a company in liquidation are concerned, Section 119 (5) of the Law (Section 136 (f) of the 2007 Revision) provides that on the appointment of a voluntary liquidator *"all the powers of the directors cease, except so far as the*

company in a general meeting or the liquidator sanctions their continuance". There is, however, no equivalent provision dealing with the powers of directors in a compulsory winding-up. Nonetheless, in my view, it is uncontroversial that in such a liquidation the directors' powers are taken over by the official liquidator(s). The passage to which I have referred above from ***Ayerst (Inspector of Taxes) v. C & K (Construction) Ltd.*** (ibid) confirms that.

23. It is settled law that an official liquidator has the same powers as the directors of the company had prior to the winding-up order. In ***Re Ebsworth & Tidy's Contract*** [1889] 42 Ch. D. 23 at 43 Lord Esher M.R. said:

> *"If a registered company goes into liquidation the Court has power to appoint an official liquidation; and if it does, what is the position of the persons who were the directors? To my mind they have ceased to exist. The official liquidator is put in their place, and is empowered to do everything which the directors might have done before"* [my emphasis].

Substantially the same point was made in ***Re Farrow's Bank*** [1921] 2 Ch. 164 by Lord Sterndale M.R. at page 173 when he said:

> *"There is no express provision in the Act in the case of a compulsory liquidation as there is in the case of a voluntary liquidation, that the powers of the directors shall cease on the appointment of a liquidator...but they do in fact cease on the appointment of a liquidator in a compulsory liquidation. In that case the liquidator is imposed upon the company compulsorily by the Court to do acts on behalf of the company and to carry on the business of the company so far as it shall be necessary for the purposes of the winding-up. It is quite true that the company does not choose him; he is put there by the Court; but he is put there to do the acts which the directors of the company did before their powers ceased: with this restriction, of course, that in all that he does he must have regard to the interest of the creditors of the company"* [my emphasis].

24. It was submitted that it follows that, if the liquidators have the same powers as the directors had prior to the liquidation then the liquidators, acting on behalf of the company and in carrying on its business as far as necessary for its winding-up, may allot shares in the company just as the directors could have done, provided, of course, that the articles of the company permit the issue of such shares.

25. In ***Collins v G. Collins & Sons Pty Ltd.*** (1984) ACLR 58 McLelland J. in the Equity Division of the Supreme Court of New South Wales considered whether or not it was permissible for a husband and wife, who were creditors and the sole shareholders and directors of the company which was in official liquidation, to convert their debt to equity in the company through the issue of preference shares to them. That would require an amendment to the company's articles. The judge noted:

> *"There is, however, a machinery problem in that the capital restructuring will require alternations to the articles of association of the company and the allotment of shares by its directors, and those matters cannot be carried out so long as the winding-up subsists. The solution to that problem is, I think, to stay the winding-up for a limited period in order to give the directors and the shareholders the opportunity during that period to effect the necessary alternations to the articles and to issue the shares and take whatever machinery steps need to be taken by the company itself".*

26. In ***Anfrank Nominees Pty Ltd.& Others v Connell & Others*** (1989) 1 ACSR 365 Kennedy J. in the Supreme Court of Western Australia noted that there was no statutory power enabling a liquidator to allot and issue shares. He stated (page 383):

> *"There is nothing to be found in the* [Companies] *Code which would authorize a liquidator to allot and issue shares in a company in liquidation, and there is no authority which I have been able to find which even remotely suggests that a*

liquidator and/or directors of a company in liquidation have that power, although it has to be recognised that the occasions for the exercise of any such power would be extraordinarily rare. I do not consider that any such power exists. This was, it would appear, the view of McLelland J. in ***Collins v G. Collins & Sons Pty Ltd.*** (ibid) *in which he temporarily stayed a winding-up order to enable shares to be issued by the directors".*

27. However, in a later Australian decision: ***Ezishop.Net Ltd. (In Liquidation) & Others v Veremu Pty Ltd. & Others*** (2003) 45 ACSR 199 Nicholas J., also sitting in the Equity Division of the Supreme Court of New South Wales said (page 206):

"The plaintiffs' submission that there is nothing in the Corporations Act 2001 which operates to prevent the liquidators from attending to the allotment and issuing of shares...is clearly correct".

The judge in considering the relevant sections of the Corporations Act said, in the context of the allotment and issue of shares by the liquidators:

Of present relevance is [the power]*....to carry on the business of the company so far as is necessary for the beneficial winding-up of that business.*

Although it should perhaps be noted that in that case the shares were proposed to be issued pursuant to a share subscription agreement entered into prior to the winding-up.

28. In ***McGrath & Honey, Joint Liquidators of HIH Insurance Ltd. (In Liquidation) v Perpetual Trustee Co. Ltd.*** (2008) 66 ACSR 210 Graham J. in the Federal Court of Australia, in considering the allotment and issue of shares by a company in official liquidation, said (at page 221):

"Given that no argument has been addressed to the question of power to issue shares in the light of [the relevant sections of the Corporations Act] *I will refrain from reaching any conclusions on the power of* [the company in liquidation] *to issue shares after 27th August 2001* [the date of the winding-up] *but will proceed on the assumption that such power existed".*

29. In none of these four Australian cases to which I have just referred was there any reference to ***Re HDT Special Vehicles (Aust.) Pty Ltd.*** (ibid) nor was there any detailed analysis or considered reasoning for the view either that it was impermissible for official liquidators to allot (or the company in compulsory liquidation to issue) shares (***Collins*** and ***Anfrank***) or that official liquidators may allot (or a company in compulsory liquidation may issue) shares in appropriate circumstances (***Ezishop.Net*** and ***McGrath & Honey***).

Conclusions

30. The apparent lack of any English or other Commonwealth authority, apart from the Australian cases to which I have referred, is perhaps not entirely surprising given that the circumstances in which a person would wish to acquire shares in a company in liquidation are likely to be exceptional and unusual. On a strict view of the statutory scheme on compulsory liquidation it may be thought inconsistent with its effect for either the members or the directors of a company in liquidation to have any further powers with regard to the issue of new shares in the company, whether it be a power in the case of the members to pass a special resolution to enable their issue or a power in the case of the directors to allot new shares. On the other hand, given the liquidators' statutory powers to carry on the business of the company and to do all things reasonably necessary for its winding up, it does not seem to me entirely at

odds with the statutory scheme for a liquidator to exercise a power which the directors would have previously had to allot shares in the company if the liquidator reasonably considers that to be necessary for the benefit of the winding-up (assuming that the articles allow the company to issue such shares), although in light of the unusual nature of such a course it seems to me that such a liquidator would be expected to seek the sanction of the Court before doing so. Nonetheless, assuming a power in the articles enabling the company to issue further shares, I do not see any reason in principle why, in appropriate circumstances, no doubt exceptional, a liquidator may not exercise the power of the directors to allot shares in the company. In my opinion, the bald statements to the contrary in ***Collins*** (ibid) and ***Anfrank*** (ibid) are, with respect, not sufficiently analytical or reasoned to alter my view in this regard and, of course, the circumstances of those cases were anyway quite different from the present case. If I am right in my view, the outstanding question is whether the shareholders of a company in compulsory liquidation may pass a special resolution to enable the company to issue shares. In my view that is the more difficult question in light of the effect of the statutory scheme as I have already outlined it as far as the powers of the members of a company in compulsory liquidation are concerned.

31. Senior Master Mahony was clearly correct when he said in ***Re HDT Special Vehicles*** (ibid) that the members of a company which is being wound up by order of the Court cannot hold meetings and pass resolutions of the type which may be held and passed by the members of companies which are not being so wound up. It is not suggested, and I think rightly, that the right of the members of such a company to

hold meetings and their power to pass resolutions of the type which they could previously have passed can be exercised as such, by the liquidator once the company is being wound up. No authority was cited to me that indicated that an official liquidator himself has power to pass a resolution of the company in lieu of the shareholders in purported exercise of their powers pre-liquidation. In ***Collins*** (ibid) the judge sought to deal with the problem by granting a temporary stay of the winding up so as to enable the members to effect amendments to the articles of association and this was proposed as an alternative course in the present case if I determined that the shareholders of the Master Fund now have no power to pass a special resolution, even with the consent of the JOLs and the approval of the Court. However, with respect, I do find that a rather artificial and unattractive approach. Once the liquidation is stayed the directors would re-acquire their powers and matters could become very difficulty to unravel if, for example, during the period of the stay they exercised those powers in a manner contrary to the interests of the creditors or the winding-up generally.

32. Having regard to the submissions and arguments put to me (and in light of the circumstances of the application by the JOLs there was no opposing argument, although counsel for the JOLs quite properly drew my attention to all the potentially relevant authorities), I have, not without hesitation, concluded that in appropriate circumstances, where it is clearly for the purposes and benefit of the winding-up of the company and with the consent of the official liquidator, the Court may authorise the shareholders of the company in liquidation to pass a necessary and appropriate resolution to amend the articles of the company for purposes of enabling the

liquidator to fulfill the objectives of the statutory scheme. In this country an official liquidator is an officer of the Court subject to the Court's supervision. In my view, a properly advised official liquidator, acting in the interests of the creditors and contributories of the company, would and should not consent to or recognize any such resolution unless satisfied that it is clearly for the benefit of the winding-up to do so and has the sanction of the supervising Court. Indeed, in my opinion, any such proposed action by the shareholders should itself require Court approval. I do not intend to suggest that the effects of the statutory scheme for compulsory liquidations may or should be departed from simply because the official liquidator and members of the company would like it to be. I do not think that is the correct analysis here. Given the powers of an official liquidator to carry on the business of the company and to take all necessary steps in that regard so as to achieve the satisfactory winding-up of the company, it seems to me that, if in the exercise of those powers it is appropriate and desirable for the official liquidator to procure the shareholders of the company to pass a resolution to amend the articles for a good and valid reason and that is approved by the Court, that is not incompatible with the overall purpose and intent of the statutory scheme and its effect. That purpose and intent is, after all, to achieve the managed and beneficial winding-up of the company for the benefit of all creditors and contributories. In the present case not only do the JOLs consent to such a resolution by the shareholders but they support it for reasons which they consider beneficial to the winding-up and which I accept are good and valid reasons in unusual and exceptional circumstances. I consider it to be also relevant and significant that the Committee, who represent the major stakeholders in the

liquidation (the only potential creditor being fully provided for) also support the proposed resolution for the same reasons. I also take note that Committee includes the Offshore Fund represented by its own professional official liquidators appointed by this Court. I accept the remarks of Senior Master Mahony in ***Re HDT Special Vehicles*** (ibid) and I am satisfied that the proposed resolution of the members of the Master Fund is indeed a resolution with respect to the purposes of the winding-up and that the members may be authorized by the Court to pass such a resolution with the consent of the JOLs. As I have explained above, I consider that in the unusual circumstances of the present case the appropriate conditions are met. I therefore authorise the members to pass the proposed resolution and I approve the issue by the Master Fund, through the JOLs of the proposed special shares to the Investment Manager, as requested by the JOLs, by their summons dated 19th July 2010. I also, as requested, order that the costs of and incidental to the JOLs application in this regard, insofar as not otherwise to be met by the Investment Manager pursuant to the Investment Management Agreement as now re-amended, shall be costs in the official liquidation of the Master Fund.

Dated: 31st August 2010

Hon. Mr. Justice Angus Foster
Judge of the Grand Court